



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: James R. Beyer, Bureau of Land & Water Quality, Bangor

RE: Consent Agreement for Wal-Mart Real Estate Business Trust, Wal-Mart Stores, Inc.  
(collectively called Wal-Mart) and RL Spencer, Inc.

DATE: September 3, 2009

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**Statute and Rule Reference:** *The Site Location of Development Act* (Site Law), 38 M.R.S.A. § 484-A(2), states that a person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.

*The Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C, states, in pertinent part, that a person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource.

**Location:** Bangor, Maine

**Description:** On February 16, 2007, the Department granted Wal-Mart Real Estate Business Trust a permit, with conditions, to construct a Wal-Mart Supercenter in Bangor. Standard Condition #1 required Wal-Mart to receive approval for any changes in the approved plans. Standard Condition #2 requires Wal-Mart and its agents to take whatever measures are necessary to prevent unreasonable soil erosion. Special Condition #5 require Wal-Mart and its contractor to hold a pre-construction meeting and Special Condition #11 required Wal-Mart to hire a Departmentally approved Third Party Inspector prior to construction. On June 3, 2008, I inspected the site and found that construction of a sedimentation basin, diversion structures and other erosion control measures were underway. One of the erosion control measures consisted of a sand berm between two rows of silt fence. This measure is not an approved one and was failing at the time of the inspection. Also at the time of the inspection, Wal-Mart had not held a pre-construction meeting or hired an approved Third Party Inspector.

**Environmental Issues:** Water quality in an aquatic system can be affected by large disturbed, non-vegetated areas without properly engineered storm water controls in place. These sites may discharge soil material into a protected natural resource having a potentially detrimental effect on the aquatic life of that system. In this case, soil material did not reach any protected natural resources.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Wal-Mart and RL Spencer, Inc. pay a monetary penalty of \$20,150.00, which has been paid. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, past enforcement actions with the violator, and that the violation could have been avoided.

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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

IN THE MATTER OF:

<b>WAL-MART REAL ESTATE BUSINESS TRUST</b>	)	<b>ADMINISTRATIVE CONSENT</b>
<b>BENTONVILLE, ARKANSAS</b>	)	
	)	
<b>WAL-MART STORES, INC.</b>	)	
<b>BENTONVILLE, ARKANSAS</b>	)	<b>AGREEMENT</b>
<b>and</b>	)	
<b>RL SPENCER, INC.</b>	)	
<b>MANLIUS, NEW YORK</b>	)	<b>(38 M.R.S.A. § 347-A)</b>
<b>SITE LAW, E&amp;S</b>	)	
<b>2008-072-L</b>	)	

This Agreement, by and among Wal-Mart Real Estate Business Trust, Wal-mart Stores, Inc. (collectively "Wal-Mart"), RL Spencer, Inc., the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Wal-Mart Real Estate Business Trust owns a parcel of land on Stillwater Avenue in Bangor, Maine as described and recorded in Book 10,932 on Page 146 of the Penobscot County Registry of Deeds.
2. Wal-Mart Real Estate Business Trust is a Delaware corporation with a mailing address of 2001 10<sup>th</sup> Street, Bentonville, AR 72716, and is authorized to conduct business in Maine. Wal-Mart is constructing a Wal-Mart Supercenter on the property described in Paragraph 1 of this Agreement. Brian Hooper is Regional Vice President of Wal-Mart Real Estate Business Trust.
3. Wal-Mart Stores, Inc. is a Delaware corporation with a mailing address of 702 8<sup>th</sup> Street, Bentonville, AR 72716, and is authorized to conduct business in Maine. Brian Hooper is Regional Vice President of Wal-Mart Stores, Inc.
4. RL Spencer, Inc. is a New York corporation with a mailing address of 4500 Pewter Lane, Building #7, Manlius, New York 13104, which was hired to construct a Wal-Mart Supercenter on the property described in Paragraph 1 of this Agreement. Richard Bruno is President of RL Spencer, Inc.

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WAL-MART STORES, INC.	)	AGREEMENT
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RL SPENCER, INC.	)	
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E&S, SITE,	)	
EIS DOCKET NUMBER	)	

5. On February 16, 2007, the Department granted approval to Wal-Mart Real Estates Business Trust in Department Order #L-23083-26-A-N/L-23083-TF-B-N, to construct a Wal-Mart Supercenter subject to a series of standard and special conditions as follows:
  - A. Special Condition # 2 states: "In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that their activities or those of their agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
  - B. Special Condition #5 states, "Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, and the contractor."
  - C. Special Condition #11 states, "Given the size and nature of the project site, the applicant must retain the services of a third party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order."
  - D. Standard Condition #1 states in part, "This approval is dependent upon and limited to the proposals and plans contained the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation."
6. On June 3, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that construction of a sedimentation pond, temporary diversion berms and sedimentation control measures for the project had begun. At the time of the inspection, a pre-construction meeting attended by Department staff had not been held as required by Special Condition #5. One of the Third Party Inspectors recommended by the Department had been engaged by RL Spencer prior to construction activities taking place. However the selection of a specific inspector had not been approved by the Department according to the procedures required by Special Condition #11. The application specified that erosion control measures would be installed in accordance with the Maine Erosion and Sediment Control BMP's. During the inspection, staff noted that the erosion control measures, a sand berm between two rows of silt fence, that were in place were not in compliance with the manual and that there had been a failure of the erosion control measures which resulted in sediment moving beyond the project boundary. Sediment did not reach a water of the State.

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7. On June 6, 2008, Department staff again inspected the property in the presence of the Third Party Inspector. Department staff indicated that the sand berm and two rows of silt fence could remain in place. Staff also suggested that an additional BMP should be installed in the areas of the sedimentation pond outlet at the south end of the site, which included a row of silt fence backed by a row of erosion control mix. It was agreed that the recommended BMP's should be installed on June 9, 2008 after the site had dried over the weekend. The sedimentation pond banks had been stabilized with erosion control mats and construction of the temporary diversion berms was proceeding northwesterly from the sedimentation pond.

8. The activities described in Paragraph 6 of this Agreement constitute the following violations:

- A. By starting construction without first having a pre-construction meeting, at which Department staff were present, Wal-Mart and RL Spencer, Inc. violated Special Condition #5 of Department Order # L-23083-26-A-N/L-23083-TF-B-N and the *Site Location of Development Act*, 38 M.R.S.A. § 483-A.
- B. By starting construction without obtaining specific Department approval of a recommended Third Party Inspector according to the procedures outlined in the Special Condition for Third Party Inspection Program, Wal-Mart and RL Spencer, Inc. violated Special Condition #11 of Department Order # L-23083-26-A-N/L-23083-TF-B-N and the *Site Location of Development Act*, 38 M.R.S.A. § 483-A.
- C. By not installing erosion control measures in accordance with the Maine Erosion and Sediment Control BMP's, Wal-Mart and RL Spencer, Inc. violated Standard Condition #1 of Department Order # L-23083-26-A-N/L-23083-TF-B-N and the *Site Location of Development Act*, 38 M.R.S.A. § 483-A.
- D. By allowing sediment to erode beyond the project boundary, Wal-Mart and RL Spencer, Inc. violated Special Condition #2 of Department Order # L-23083-26-A-N/L-23083-TF-B-N, the *Site Location of Development Act*, 38 M.R.S.A. § 483-A, and the *Erosion and Sedimentation Control Act*, 38 M.R.S.A. § 420-C.

9. On June 4, 2008, the Department issued a Notice of Violation to Wal-Mart and on June 5, 2008, to RL Spencer, Inc. regarding the violations described in Paragraphs 6 and 8 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).

10. On June 6, 2008, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that erosion control measures had been promptly reinstalled, maintained and were functioning as required.

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11. The Department has regulatory authority over the activities described herein.
12. Pursuant to 38 M.R.S.A. § 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
13. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
14. To resolve the violations referred to in Paragraphs 6 and 8 of this Agreement, Wal-Mart and RL Spencer, Inc. agree to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Twenty Thousand One Hundred Fifty dollars (\$20,150.00) as a civil monetary penalty.
15. The Department and Office of the Attorney General grant a release of their causes of action against Wal-Mart and RL Spencer, Inc. for the specific violations listed in Paragraphs 6 and 8 of this Agreement on the express condition that all actions listed in Paragraph 14 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of five (5) pages.

WAL-MART REAL ESTATE BUSINESS TRUST

BY: B. Hooper DATE: 6/17/09  
BRIAN HOOPER, REGIONAL VICE PRESIDENT

WAL-MART STORES, INC.

BY: B. Hooper DATE: 6/17/09  
BRIAN HOOPER, REGIONAL VICE PRESIDENT

RL SPENCER, INC.

BY: R. Bruno DATE: 7/21/09  
RICHARD BRUNO, PRESIDENT

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL